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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,174

02/18/2004

Fred L. Pirkle

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1807

270 7590 08/14/2007
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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

08/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/781,174	PIRKLE ET AL.	
	Examiner	Art Unit	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/27/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I in the reply filed on 7/9/07 is acknowledged. The traversal is on the ground(s) that a food support and solid fuel support were inherent features of the method (group II). This is not found persuasive because the food and solid fuel are not recited in the method claims. In addition, the method claims do not recite an electric motor operated by a controller. The method claims could have been accomplished by manual control via monitoring of conventional thermometers.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites "the supports being having food supporting and fuel supporting areas". It is not clear what is meant by this phrase.

5. Claim 4 recites "it". It is not clear what "it" is.

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6. Claims 7 and 14 recite "said enclosure is substantially free of openings".

However, it is not clear how this would be possible since openings are required for the impeller to pull in outside air, as well as an access opening to provide for removal and/or placement of food and/or fuel and ash.

7. Claim 8, lines 8-10 recite "a food article on said food support" as well as "an article of food on said food support". It is not clear whether these are the same article, or not.

8. Claim 8 recites the limitation "said temperature sensors". There is insufficient antecedent basis for this limitation in the claim.

9. Claims 2-3 and 9-10 recite "adjusters". However, it is not clear what physical form an "adjuster" would take. It is not clear what an "adjuster" is. It is not clear whether an "adjuster" is simply an algorithm or program within the controller.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Blevins [Pat. No. 4,934,260].

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Blevins teaches a cooking device comprising an enclosure with a food support and solid fuel support (Figure 1, #12, 30, 44), an impeller (Figure 1, #16), a temperature sensor (Figure 1, #58), a thermostatic controller that operates the impeller to maintain a constant temperature (Figure 1, #60; column 2, lines 52-56; column 3, lines 1-4).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blevins as applied above, in view of Wollich [Pat. No. 4,054,778] and Kibourian [Pat. No. 5,168,860].

Blevins teaches the above mentioned components as well as an electric motor (Figure 1, M), a lack of other openings (Figure 1), and controlling the blower via the conventional manner (column 2, line 56). Blevins does not recite a second temperature sensor for sensing the food's internal temperature, the controller causing the impeller to increase air flow if the temperature drops and decreasing airflow if the temperature rises, the controller reducing the set point temperature as the sensed internal temperature of the food increases, first and second adjusters, an internal wall with a deflector, and turning the fan on and off. Wollich teaches a cooking device comprising a temperature sensor for sensing the food's internal temperature, the controller reducing

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the set point temperature as the sensed internal temperature of the food increases, and first and second adjusters (abstract; column 1, lines 30-51). It would have been obvious to one of ordinary skill in the art to incorporate the temperature control components of Wollich into the invention of Blevins since both are directed to cooking devices, since Blevins teaches controlling the temperature via any conventional manner (column 2, line 56), since the internal temperature sensing and reduction of temperature of Wollich provided more accurate and precise cooking of the food, and since this temperature control of Wollich provided maximum enzyme action for tenderizing meat as well as preventing additional cooking or bacterial growth (column 1, line 48). Kibourian teaches a cooking device with a fan (Figure 2, #61), a controller (column 3, line 61), causing the impeller to increase air flow to create higher temperatures and decreasing airflow for lower temperatures (column 4, line 17), adjusting the airflow by turning the fan on and off (column 4, lines 17-23), and an inner wall with a deflector (Figure 2, #55). It would have been obvious to one of ordinary skill in the art to incorporate the fan control and components of Kibourina into the invention of Blevins, in view of Wollich, since all are directed to cooking devices, since Blevins already included a fan controlled in any conventional manner (column 2, line 56), since increasing the airflow to increase the temperature and vice versa was the conventional means for controlling fans as shown by Kibourian (column 4, line 17-23), since turning the fan off and on as taught by Kibourian eliminated the need for more complicated control means, and since the deflector of Kibourian helped ensure that the air reached the fuel before the it could cool the food which was being cooked.

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14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Patenaude et al [Pat. No. 4,867,050], Ferreira et al [Pat. No. 6,615,820], Stawski et al [Pat. No. 4,516,561], Hottenroth et al [Pat. No. 3,868,943], Holder Jr [Pat. No. 3,697,198], Milligan [Pat. No. 4,475,529], Sada et al [US 2002/0033100A1], Wrasse [Pat. No. 5,176,124], and Robertson [Pat. No. 4,510,854] teach cooking devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
8/13/07